

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on September 29, 2005, in Austin, Texas. The meeting opened at 9:14 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
John Johnson	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

Administrative Staff:

Michael W. Behrens, Executive Director
 Steve Simmons, Deputy Executive Director
 Richard Monroe, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation's Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:49 p.m. on September 21, 2005, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

A letter from Governor Rick Perry thanking all the Texas Department of Transportation employees for their work in the Hurricane Rita evacuation and recovery was read into the record by Chairman Williamson.

ITEM 1. Approval of Minutes from the August 25, 2005, regular meeting, of the Texas Transportation Commission, and approval of revised minutes from the July 28, 2005, meeting.

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the minutes from the August 25, 2005, regular meeting, of the Texas Transportation Commission, and the revised minutes from the July 28, 2005, regular meeting.

ITEM 2. RESOLUTION/RECOGNITION

a. Resolution designating October 2005 as Commute Solutions Month for the five-county Austin-Round Rock Metropolitan Area

Director, Public Transportation Division Eric Gleason presented this resolution to Senator Gonzalo Barrientos. The commission received comments from Senator Barrientos.

b. Acknowledgement of sponsorship from Advantage Rent-A-Car for the Don't Mess with Texas scholarship program

Travel Division Director Doris Howdeshell introduced and the commission received comments from Advantage Rent-a-Car District Manager Mark Kaligian and national sales director Monte Ramey.

Executive Director Mike Behrens acknowledged a group of TxDOT young engineers from the Dallas, Fort Worth and Houston Districts.

ITEM 3. AVIATION

a. Various Counties - Approve funding for airport improvement projects at various locations

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Aviation Division Director David Fulton:

110217
AVN

The Texas Department of Transportation (department) is authorized under Transportation Code, Chapter 21 and Chapter 22, to assist in the development and establishment of airports in the State of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Friday, August 19, 2005, a public hearing was held, and no comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$2,207,147.

Note: Exhibit A on file with minute order clerk.

b. Reappoint members to the Aviation Advisory Committee

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Aviation Division Director David Fulton:

110218
AVN

Transportation Code §21.003, requires the Texas Transportation Commission (commission) to appoint a six-member Aviation Advisory Committee (committee) to advise the commission and the Texas Department of Transportation (department) on aviation matters.

Transportation Code §21.003, further provides that each member of the committee must have five years of successful experience as an aircraft pilot, an aircraft facilities manager or a fixed base operator.

The department's administrative rules governing advisory committees (Title 43, TAC, §§1.80-1.85) provide that committee members serve three-year terms.

The terms of two members expired on August 31, 2005; therefore, it is necessary for the commission to appoint two new members for terms to expire on August 31, 2008.

The commission has determined that the individuals listed below fulfill the statutory requirements to serve as members of the committee:

Gordon Richardson	James Schwertner
P.O. Box 667	P.O. Box 1
Caldwell, Texas 77836	Schwertner, Texas 76573

IT IS THEREFORE ORDERED by the commission that the individuals identified above are hereby appointed for three-year terms as members of the Aviation Advisory Committee, with terms effective September 1, 2005, expiring on August 31, 2008.

The commission received comments from Texas Aviation Advisory Committee members Gordon Richardson and Jim Schwertner.

ITEM 4. PUBLIC TRANSPORTATION

Appoint members to the Public Transportation Advisory Committee

Commissioner Johnson made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

110219
PTN

Three members of the Public Transportation Advisory Committee (committee) have terms that will expire September 30, 2005. The Texas Transportation Commission (commission) makes the following appointments:

Term expiring September 30, 2006:

Oscar Trevino – Representing the General Public

Term expiring September 30, 2008:

Chester Jourdan – Public Transportation User

John Wilson – Public Transportation Provider

House Bill 2702, 79th Legislature, Regular Session, 2005, amended Transportation Code, §455.004 by adding two additional members to the original nine-member Public Transportation Advisory Committee. The two additional positions which represent a member of the general public and one member with experience in administering health and human services programs. The commission makes the following appointments:

Term expiring September 30, 2007:

Reba Malone – General Public

Term expiring September 30, 2008:

DeSheryl Thompson – Health and Human Services Programs

Transportation Code, §455.004, directs the commission to appoint an eleven-member committee to advise the commission on the needs and problems of the state's public transportation providers, including the methods for allocating state public transportation money; comment on rules or rule changes involving public transportation matters; advise the commission on the implementation of Transportation Code, Chapter 461; and perform other duties as determined by order of the commission.

Title 43, Texas Administrative Code, §1.84, administrative rules for the committee, includes a provision that members serve staggered three-year terms, unless removed sooner at the discretion of the commission.

IT IS THEREFORE ORDERED by the commission that the individuals identified above are appointed for the terms specified as members of the Public Transportation Advisory Committee.

A letter from Governor Rick Perry directing the department to provide discretionary funds to offset increased operating expenses and hurricane related costs was read into the record by Chairman Williamson.

ITEM 5. REPORTS

a. Report on the Lubbock Metropolitan Planning Organization funding plan

The commission received comments from Lubbock MPO chair Tom Martin who then introduced Senator Robert Duncan.

b. Update on the status of environmental and toll feasibility studies for Loop 49 in Smith and Gregg counties

The commission received comments from Northeast Texas Regional Mobility Authority Chair Jeff Austin, III; and Tyler District Engineer Mary Owen.

ITEM 6. Promulgation of Administrative Rules

a. Proposed Adoption Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001: (to be published in the Texas Register for public comment)

(1) Chapter 6 - State Infrastructure Bank

Amendments to §§6.1-6.3, and New §6.5, General Provisions, Amendments to §6.12, Eligible Projects (Eligibility), and §6.42, Performance of Work (Financial Assistance Agreements)

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110220
propose
FIN

The Texas Transportation Commission (commission) finds it necessary to amendments to §§6.1 – 6.3 and new §6.5 concerning general provisions, amendments to §6.12, concerning eligible projects, and §6.42, concerning performance of work, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new section, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§6.1 – 6.3, §6.12, and §6.42 and new §6.5, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through D on file with minute order clerk.

(2) Chapter 7 - Rail Facilities and Chapter 15 - Transportation Planning and Programming (MO)

- Chapter 7, Rail Facilities, New Subchapter A, General Provisions, New §7.1, Definitions;
- Chapter 7, Rail Facilities, Subchapter B, Contracts, New §7.10, Definitions, New §7.12, Construction and Maintenance Contracts, New §7.13, Leasing of Rail Facilities;
- Chapter 7, Rail Facilities, New Subchapter C, Abandoned Rail, New §7.20, Definitions, New §7.21, Abandonment of Rail Line by Rural Rail Transportation District, New §7.22, Acquisition of Abandoned Rail Facilities;
- Chapter 15, Transportation Planning and Programming, Repeal of Subchapter L, Abandonment of Rail Line by Rural Rail Transportation District, §§15.140-15.145; and
- Chapter 15, Transportation Planning and Programming, Repeal of Subchapter M, Rail Facilities, §§15.150-15.155

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Transportation Planning and Programming Division Director James Randall:

110221
propose
TPP

The Texas Transportation Commission (commission) finds it necessary to new §7.1, §7.10, §7.12, §7.13, §7.20, §7.21, and §7.22, and the repeal of §§15.140-15.155 all relating to rails and rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - G, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §7.1, §7.10, §7.12, §7.13, §7.20, §7.21, and §7.22 and the repeal of §§15.140-15.155 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through G on file with minute order clerk.

(3) Chapter 15 - Transportation Planning and Programming
Amendments to §15.55, Construction Cost Participation (concerning Economically Disadvantaged Counties) (Federal, State, and Local Participation)

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Transportation Planning and Programming Division Director James Randall:

110222
propose
TPP

The Texas Transportation Commission (commission) finds it necessary to amendments to §15.55, Construction Cost Participation, relating to economically disadvantaged counties, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §15.55 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(4) Chapter 15 - Transportation Planning and Programming
Amendments to §15.122, Design Considerations (concerning the aesthetic characteristics of a transportation project)

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Design Division Director Mark Marek:

110223
propose
DES

The Texas Transportation Commission (commission) finds it necessary to amendments to §15.122, relating to design considerations, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §15.122 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(5) Chapter 21 - Right of Way**Amendments to §21.16, Use of Options to Purchase for Advance Acquisition of Real Property (Land Acquisition Procedures)**

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

110224
propose
ROW

The Texas Transportation Commission (commission) finds it necessary to amendments to §21.16, relating to use of options to purchase for advance acquisition of real property, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.16 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

(6) Chapter 26 - Regional Mobility Authorities**Amendments to §26.2, Definitions, §26.11, Petition, §26.33, Design and Construction, and §26.51, Conflict of Interest**

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110225
propose
TTA

The Texas Transportation Commission (commission) finds it necessary to amendments §26.2, §26.11, §26.33 and §26.51, concerning regional mobility authorities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments §26.2, §26.11, §26.33 and §26.51, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through E on file with minute order clerk.

(7) Chapter 26 - Regional Mobility Authorities and Chapter 27 - Toll Projects

- Chapter 26, Regional Mobility Authorities, Subchapter E, Conversion and Transfer of TxDOT Facility, Amendments to §26.41, Request, §26.42, Public Involvement, §26.43, Approval, §26.45, Reimbursement, and §26.46, Use of Surplus Revenue;
- Chapter 27, Toll Projects, Subchapter B, Transfer of Department Turnpike Projects and Conversion of Non-Toll State Highways, Amendments to §27.11, Purpose, §27.12, Definitions, §27.13, Transfer of Turnpike Projects, §27.14, Conversion of Non-Toll State Highways, New §27.15, Project Development for Transferred Toll Projects, and New §27.16, Toll Projects of Other Entities Within State Highway Right of Way;
- Chapter 27, Toll Projects, Subchapter D, Regional Tollway Authorities, Amendments to §27.40, Purpose, and Repeal of §27.43, Transfer of Existing Public Highways; and
- Chapter 27, Toll Projects, Subchapter F, County Toll Roads, Amendments to §27.70, Purpose, Repeal of §27.72, Transfer of State Highways, New §27.72, Conveyance of State Ferry, Amendments to §27.73, Project Approval, §27.74, Design and Construction Standards for Toll Road Projects, and New §27.75, Commission Order Directing that County Toll Project Shall Not Become Part of the State Highway System

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110226
propose
TTA

The Texas Transportation Commission (commission) finds it necessary to the following rule revisions, to be codified under Title 43, Texas Administrative Code, Part 1.

(1) Chapter 26, Regional Mobility Authorities, Subchapter E, Conversion and Transfer of TxDOT Facility: Amendments to §26.41, Request, §26.42, Public Involvement, §26.43, Approval, §26.45, Reimbursement, and §26.46, Use of Surplus Revenue;

(2) Chapter 27, Toll Projects, Subchapter B, Transfer of Department Turnpike Projects and Conversion of Non-Toll State Highways: Amendments to §27.11, Purpose, §27.12, Definitions, §27.13, Transfer of Turnpike Projects, §27.14, Conversion of Non-Toll State Highways, New §27.15, Project Development for Transferred Toll Projects, and New §27.16, Toll Projects of Other Entities Within State Highway Right of Way;

(3) Chapter 27, Toll Projects, Subchapter D, Regional Tollway Authorities: Amendments to §27.40, Purpose, and the Repeal of §27.43, Transfer of Existing Public Highways; and

(4) Chapter 27, Toll Projects, Subchapter F, County Toll Roads: Amendments to §27.70, Purpose, Repeal of §27.72, Transfer of State Highways, New §27.72, Conveyance of State Ferry, Amendments to §27.73, Project Approval, §27.74, Design and Construction Standards for Toll Road Projects, and New §27.75, Commission Order Directing that County Toll Project Shall Not Become Part of the State Highway System.

The preambles and the proposed repeals, amendments, and new sections, attached to this minute order as Exhibits A - H, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeals, amendments, and new sections are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through H on file with minute order clerk.

(8) Chapter 27 - Toll Projects

Amendments to §§27.1-27.5, and New §27.6, Protest Procedures, (Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects) (concerning Comprehensive Development Agreements

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110227
propose
TTA

The Texas Transportation Commission (commission) finds it necessary to amendments to §§27.1 – 27.5 and new §27.6, relating to comprehensive development agreements, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§27.1 – 27.5 and new §27.6 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

b. Proposed Adoption Under Title 16, Economic Regulation and Title 43, Transportation, Texas Administrative Code and the Administrative Procedure Act, Government Code, Chapter 2001:

(to be published in the Texas Register for public comment)

(1) Title 16, Part 1, Chapter 5 - Rail Safety Rules and Title 43, Chapter 7 - Rail Facilities

- Title 16, Part 1, Repeal of Chapter 5, Rail Safety Rules; and
- Title 43, Chapter 7, New Subchapter D, Rail Safety, §§7.30-7.42

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Transportation Planning and Programming Division Director James Randall:

110228
propose
TPP

The Texas Transportation Commission (commission) finds it necessary to

the repeal of Title 16, Chapter 5, Rail Safety Rules and propose Title 43, Chapter 7, new Subchapter D, §§7.30–7.42, relating to rail safety, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the proposed repeals and new sections, attached to this minute order as Exhibits A - F, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeal of Title 16, Chapter 5, Rail Safety Rules and Title 43, Chapter 7, new Subchapter D, §§7.30–7.41, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through F on file with minute order clerk.

(2) Title 16, Part 6, Chapter 101 - Practice and Procedure; Chapter 103 - General Rules; Chapter 105 - Advertising Rules; Chapter 107 - Warranty Performance Obligations; Chapter 109 - Lessors and Lease Facilitators; and Chapter 111 - General Distinguishing Numbers and Title 43, New Chapter 8, Motor Vehicle Distribution

- Title 16, Part 6, Repeal of Chapter 101 - Practice and Procedure, Chapter 103 - General Rules, Chapter 105 - Advertising Rules, Chapter 107 - Warranty Performance Obligations, Chapter 109 - Lessors and Lease Facilitators, and Chapter 111 - General Distinguishing Numbers; and
- Title 43, New Chapter 8 - Subchapter A, General Provisions, Subchapter B, Adjudicative Practice and Procedure, Subchapter C, Licenses, Generally, Subchapter D, Franchised Dealers, Manufacturers, Distributors, Converters, and Representatives, Subchapter E, General Distinguishing Numbers, Subchapter F, Lessors and Lease Facilitators, Subchapter G, Warranty Performance Obligations, and Subchapter H, Advertising

Chairman Williamson made a motion, seconded by Commissioner Houghton to amend the minute order to a 60-day public comment period and to hold public hearings in various areas of the state. Commissioner Johnson then moved to pass the amended minute order with a second from Commissioner Houghton and the commission approved the following minute order presented by Motor Vehicle Division Director Brett Bray:

110229
propose
MVD

The Texas Transportation Commission (commission) finds it necessary to

the repeal of Title 16, Part 6, Chapter 101, Practice and Procedure; Chapter 103, General Rules; Chapter 105, Advertising Rules; Chapter 107, Warranty Performance Obligations; Chapter 109, Lessors and Lease Facilitators; and Chapter 111, General Distinguishing Numbers.

The commission further finds it necessary to propose new Chapter 8, relating to motor vehicle distribution, including Subchapter A, §§8.1-8.6, General Provisions; Subchapter B, Adjudicative Practice and Procedure, §§8.21-8.58; Subchapter C, Licenses,

Generally, §§8.81-8.87; Subchapter D, Franchised Dealers, Manufacturers, Distributors and Converters, §§8.101-8.113; Subchapter E, General Distinguishing Numbers, §§8.131-8.148; Subchapter F, Lessors and Lease Facilitators, §§8.171-8.181; Subchapter G, Warranty Performance Obligations, §§8.201-8.210; and Subchapter H, Advertising, §§8.241-8.271, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the proposed repeals and new sections, attached to this minute order as Exhibits A - N, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeals and new sections are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A through N on file with minute order clerk.

c. Final Adoption Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

Chapter 4 – Employment Practices

Amendments to §4.13, Notification (Job Application Procedures)

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Human Resources Division Director Diana Isabel:

110230
HRD

The Texas Transportation Commission (commission) finds it necessary to adopt an amendment to §4.13, relating to the notification requirement of vacant job positions, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendment, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendment is adopted and is authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Note: Exhibits A and B on file with minute order clerk.

ITEM 7. TRANSPORTATION PLANNING

a. Dallas County - I-635/I-30 - Authorize a Congressional High Priority Project in Category 10, Supplemental Transportation Projects, of the 2005 Statewide Mobility Program

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Transportation Planning and Programming Division Director James Randall:

110231
TPP

Title 23 U.S.C. Section 117(a) authorizes funds for carrying out High Priority Projects under Section 1701 of the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU). Under that section of SAFETEA-LU, funding was authorized for the construction of an interchange project at INTERSTATE 635 and INTERSTATE 30.

The Texas Transportation Commission (commission) approved the 2005 Statewide Mobility Program (SMP) by Minute Order 109862, dated November 18, 2004.

To utilize these federally authorized funds, it is necessary to amend Category 10, Supplemental Transportation Projects, of the 2005 SMP to include this project.

IT IS THEREFORE ORDERED by the commission that Category 10, Supplemental Transportation Projects, of the 2005 SMP be amended to authorize this additional project for \$15 million.

b. Hill County - Construction of two local access roads as part of the on-going I-35 project in the City of Hillsboro

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Design Division Director Mark Marek:

110232
DES

In HILL COUNTY, inclusive of portions of the corporate limits of the City of Hillsboro (city), the Texas Department of Transportation (department) has proposed to reconstruct I-35, a controlled access interstate facility. The limits of this proposed project run from 0.14 miles north of FM 286 in Hillsboro to 0.50 miles north of I-35 East-West split in Hill County, a distance of approximately 3.5 miles. This project was authorized by the Texas Transportation Commission (commission) on September 27, 2001 by Minute Order 108653.

The construction of this project will include the reconstruction of the existing frontage roads through Hillsboro and their conversion to one-way operation, resulting in circulation and accessibility issues on the local system. To maintain local circulation and minimize local use of the through highway, the department proposes to:

1. Reconstruct and extend the construction approximately 900 feet, of Crestridge Drive, a connecting road from the southbound frontage road of I-35 to Highland Drive.
2. Reconstruct Hill County Road 4282 from the northbound frontage road of I-35 to the east, and construct a connecting road from the end of the proposed HCR 4282 to FM 286, a distance of approximately 1,700 feet.

These roadways are located within the jurisdictional boundaries of the city.

The commission finds that construction of the local access roads as local roadway connectors is necessary for the safety and efficiency of the overall design to maintain local circulation and minimize local use of the through highway, and authorizes inclusion of the local access roads in the project.

Title 43, Texas Administrative Code, Section 11.55, authorizes the department to include a local access road in a department project if the local access road is necessary to restore circulation or to otherwise benefit the state highway system.

Transportation Code, §201.103 empowers the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002 authorizes the commission to lay out, construct, maintain, and operate a modern state highway system, with an emphasis on the construction of controlled access highways.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to tender the following proposal to the city:

Provided that the city will:

1. If not already owned by the city, acquire in the city's name and at the city's sole expense that portion of right of way located within its respective jurisdiction which is necessary for the construction of the local access roads. The acquisition shall be in accordance with the department's policy and all federal and state laws governing the procedures for acquiring real property and providing relocation assistance benefits.
2. Authorize entry on such right of way by the State of Texas to lay out and construct the roadway facilities.
3. Agree to accept jurisdiction, maintenance and operation of the local access roads following completion of construction.

The department will:

1. Reimburse any utility owners having to relocate their facilities due to conflicts with the construction activities at one hundred percent of the eligible costs of the relocation.
2. Reconstruct and extend construction of Crestridge Drive from the southbound frontage road of I-35 to Highland Drive, a distance of approximately 900 feet.
3. Construct a connecting road from the end of reconstructed HCR 4282 to FM 286, a distance of approximately 1,700 feet.

IT IS FURTHER ORDERED by the commission that the executive director or the director's designee is hereby authorized to enter into any necessary agreements with the applicable local government containing terms consistent with the provisions of this order.

This order shall become operative upon acceptance by the applicable local government and, if not accepted within 30 days of the date hereof, the actions contained in this order shall not be implemented.

ITEM 8. TOLL PROJECTS

a. Bexar County - Consider preliminary approval of a request for financing from the Alamo Regional Mobility Authority to pay certain engineering, legal and financial planning costs to study and analyze competing proposals submitted for the proposed Loop 1604 and US 281 turnpike project and its impacts on other potential elements of a proposed toll system in Bexar County

Commissioner Andrade made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110233
TTA

In Minute Order 109523, dated December 18, 2003, the Texas Transportation Commission (commission) authorized the creation of the Alamo Regional Mobility Authority (authority), formerly known as the Bexar County Regional Mobility Authority, with the boundaries of the authority to be the entire geographic area of Bexar County, Texas.

Minute Order 109523 further provided that the initial project to be developed, maintained, and operated by the authority may be a proposed approximate 50-mile toll-road network. The Texas Department of Transportation (department) is currently constructing a portion of the Starter Toll System, that includes new capacity on Loop 1604 from west of I-10 to I-35 north, and new capacity on US 281 from Loop 1604 north to Marshall Road.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a toll project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

On April 28, 2005, the department received an unsolicited concession proposal from a consortium led by Zachry American Infrastructure and Cintra Concesiones de Infraestructuras de Transporte (Zachry American/Cintra) proposing private development, operation, maintenance, and financing of a significant portion of the toll road network proposed in the San Antonio area. After review by the department, the commission, in Minute Order 110112, authorized issuance of a request for competing proposals and qualifications (RFPQ). That request was issued on July 29, 2005.

In accordance with Section 27.53 of the toll equity rules, the authority has submitted a request for \$1 million to pay for authority staff participation in the review and evaluation of competing proposals and qualifications submitted in response to the RFPQ, and the comprehensive development agreement (CDA) for the project. The financial assistance would also be used to allow the authority to obtain independent engineering, financial and legal consulting assistance in the development of project development and financing terms proposed by the authority for inclusion in the request for detailed proposals (RFDP) or the CDA. The financial assistance may be in the form of a grant or loan.

The requested financial assistance would consist of \$1 million from TxDOT's preliminary engineering funds allocated to the San Antonio District. Preliminary engineering funding is appropriated to the state highway fund and must be expended by the department. Accordingly, preliminary engineering money to be expended on the proposed project must be approved by the commission under the toll equity rules.

Information and data required by Section 27.53(b) is either contained in the request for financing or in the petition for authorization to form the authority filed with the department on September 3, 2003. Supplemental information and data required by Section 27.53(c) is contained in the request for financing or has already been provided to the department.

As provided in Minute Order 109523, the authority will benefit the state and the traveling public and improve the efficiency of the state's transportation system through the potential construction and operation of the Starter Toll System, which the project for which competing proposals and qualifications are being sought, and which will enhance mobility and safety within these segments of the state highway system.

The proposed project for which competing proposals and qualifications are being sought is consistent with the approved Texas Transportation Plan, included in the Statewide Transportation Improvement Program, and included in the approved plan of the San Antonio-Bexar County Metropolitan Planning Organization.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Alamo Regional Mobility Authority meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$1 million, in the form of a loan or a grant, and directs the executive director to implement the actions authorized and required by those provisions.

The commission received comments from Alamo Regional Mobility Authority chairman Bill Thornton.

b. Dallas County - Authorize publication of Request for Competing Proposals and Qualifications for development of the proposed SH 161 toll road project from SH 183, south to I-20 through the cities of Irving and Grand Prairie, within the existing right-of-way and inside the frontage roads currently under construction. Operation and maintenance of the frontage roads within the proposed project is also included. Request for Competing Proposals and Qualifications relates to an unsolicited proposal from a consortium led by AECOM Enterprises (MO)

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

110234
TTA

Chapter 223, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement with a private entity that provides for the design, construction, financing, maintenance, or operation of a toll project on the state highway system.

On August 11, 2005, the department received an unsolicited proposal received from the DFW Southern Gateway Consortium, a consortium established by AECOM Enterprises, to finance, design, construct, operate and maintain tolled main lanes along an extension of SH 161 from SH 183, south to I-20 through the Cities of Irving and Grand Prairie. The project would be located within the existing right of way and inside the frontage roads currently under construction.

Section 223.203, Transportation Code prescribes requirements for an unsolicited proposal and requires the department, if a decision is made to further evaluate the unsolicited proposal, to publish a request for competing proposals and qualifications in the Texas Register that includes the criteria that will be used to evaluate the original proposal and any competing proposals, the relative weight given to the criteria, and a deadline by which the competing proposals must be received.

Development of the project would be beneficial to the department in responding to growing traffic congestion in the Dallas/Fort Worth area, particularly along the SH 161 corridor. There exists the potential for expediting the completion of this project through the development of a public-private partnership and the employment of innovative methods such as those described in the unsolicited proposal.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the department is authorized and directed to publish in the Texas Register and in one or more newspapers of general circulation, a request for competing proposals and qualifications for the development of the proposed toll project to extend SH 161 from SH 183 to I-20 through the Cities of Irving and Grand Prairie.

IT IS FURTHER ORDERED that the request include a notification to interested parties that the department intends to evaluate the proposal submitted by DFW Southern Gateway Consortium, and that the department will accept for simultaneous consideration any competing proposals and qualifications responsive to the request that are received within 90 days of the date the request is published in the Texas Register.

ITEM 9. PASS-THROUGH TOLLS

a. Authority to Negotiate Agreement

(1) Chambers County - Authorize the executive director to negotiate a pass-through toll agreement with Chambers County for improvements to various highway projects in the county

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110235
FIN

On April 1, 2005, Chambers County (county) submitted a proposal for a pass-through toll agreement. The county's proposal provided for the county to construct extensions to FM 1409 north to I-10 including grade separation, FM 1409 from I-10 south to FM 565, and improvements to Fisher Road from SH 99 east to FM 2354.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The Texas Transportation Commission (commission) previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to

regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state, subject to the outcome of the negotiations with the county; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Houston-Galveston Area Council (H-GAC); (5) potential benefits to regional air quality must be quantified and documented by H-GAC through the air quality conformity process in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the county lacks significant experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the H-GAC Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for each project; (3) prior to construction, must be included in the H-GAC Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Chambers County. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

(2) Comal County - Authorize the executive director to negotiate a pass-through toll agreement with Comal County for improvements to various highway projects in the county

Commissioner Johnson made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110236
FIN

On April 18, 2005, Comal County (county) submitted a proposal for a pass-through toll agreement. The proposal provided for the county to construct improvements to SH 46 from Loop 337 in New Braunfels to west of US 281 in Bulverde and the expansion of US 281 to a 4-lane divided highway from the Guadalupe River to the Blanco County line, with purchase of right of way to accommodate construction of express lanes on US 281 in the future.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The Texas Transportation Commission (commission) previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state, subject to the outcome of the negotiations with the county; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the department's San Antonio District Office (the district); (5) potential benefits to regional air quality must be quantified and documented by the district in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the county lacks significant experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the department's UTP, thereby identifying committed funding for each project; (2) prior to construction, must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Comal County. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

b. Authority to Issue a Request for Competing Proposals

Webb County - San Isidro Management, L.C. - Authorize the executive director to issue a request for competing proposals to private entities for the construction of an interchange on Loop 20 and International Boulevard in Laredo under a pass-through toll agreement; the request for competing proposals relates to a proposal for a project to be developed under a pass-through toll agreement received from San Isidro Management, L.C.

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110237
FIN

On June 22, 2005, San Isidro Management, L.C. (San Isidro), a private entity, submitted a proposal for a pass-through toll agreement. San Isidro's proposal provided for the construction of an interchange on Loop 20 and International Boulevard in Laredo, Texas.

Section 222.104(b), Transportation Code, authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity. A pass-through toll is a per vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Sections 5.54 and 5.55 of the commission's rules provide that the commission may authorize the department's executive director, upon receipt of a pass-through toll proposal from a private entity, to solicit competing proposals for the project after considering the: (1) financial benefits to the state; (2) local public support for the project; (3) whether the project is in the department's Unified Transportation Program (UTP); (4) extent to which the project will relieve congestion on the state highway system; (5) potential benefits to regional air quality that may be derived from the project; (6) compatibility of the proposed project with existing and planned transportation facilities; and (7) qualifications of the proposer to accomplish the proposed work.

After considering the factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide significant financial benefits to the state; (2) San Isidro's proposal indicated broad support for the project and did not identify any opposition; (3) the project identified in the proposal is in the current UTP, therefore future funding sources should be identified; (4) the project identified in the proposal demonstrates the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the Laredo Metropolitan Planning Organization (Laredo-MPO); (5) potential benefits to regional air quality must be quantified and documented by Laredo-MPO through the air quality conformity process in accordance with all state and federal regulations; (6) the project is compatible with existing and planned transportation facilities; and (7) San Isidro's proposed team for implementation, management and completion of the project appears qualified to accomplish the proposed work.

Pursuant to Section 5.55 of the commission's rules, the department will publish notice of the request for competing proposals in the Texas Register and in one or more newspapers of general circulation. The notice will state that the department has received a proposal for a pass-through toll agreement from a private entity, that the department intends to evaluate the proposal, and that the department may negotiate a pass-through toll agreement with the proposer. The notice will state that the department will accept for simultaneous consideration any competing proposal received within 45 days of the publication of the notice in the Texas Register, or such additional time as authorized by the commission. The notice will summarize the proposed project, identify its location, and specify the general criteria that will be used to evaluate all proposals and the relative weight given to the criteria.

After evaluation of properly submitted proposals, the department will rank proposals and may select the private entity whose proposal provides the best value to the department. The department will negotiate a pass-through toll agreement with that proposer.

Before the project in this proposal is planned, developed, or constructed using funds administered by the department, the project: (1) must be included in the Laredo-MPO Metropolitan Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for the project; (3) prior to construction, must be included in the Laredo-MPO Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized and directed to issue a notice of request for competing proposals to private entities for the construction of an interchange on Loop 20 and International Boulevard in Laredo under a pass-through toll agreement.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with the private entity whose proposal, based on the department's evaluation, provides the best value to the department. If the negotiations are unsuccessful, the department may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party. Upon completion of successful negotiations, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with San Isidro if no competing proposals are received in response to the notice for competing proposals. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

The commission received comments from San Isidro Management vice president J. J. Houdmann; and Kenneth Valls, attorney representing Wilson Trevino Valls & Trevino, LLP.

ITEM 10. STATE INFRASTRUCTURE BANK

Smith County - Duck Creek Water Supply Corporation - Consider granting preliminary approval of an application from the Duck Creek Water Supply Corporation to borrow \$580,000 from the State Infrastructure Bank to pay for utility relocation made necessary by the expansion of US 69 from south of US 80 to north of FM 1804

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

110238
FIN

In accordance with Title 43 Texas Administrative Code, Section 6.23, the Duck Creek Water Supply Corporation (corporation) has submitted an application for a loan from the State Infrastructure Bank (SIB). The loan will pay for utility adjustments made necessary by the expansion of US 69 from a two-lane to a four-lane divided highway from the Sabine River to north of FM 1804.

On June 27, 2005, the corporation passed a resolution authorizing submission of an application to the SIB. This resolution indicates the official written approval of the project by the governing body of the corporation.

The corporation has represented that the loan will be secured by its utility systems revenues. This indicates the applicant is likely to have sufficient revenue to assure repayment of the loan. The present and projected financial condition of the SIB is sufficient to cover this request.

The US 69 project is listed in the 2004-2006 Statewide Transportation Improvement Program and is consistent with the Texas Transportation Plan. The project will improve safety and efficiency of the state's transportation system.

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a SIB for the purpose of making loans and providing other financial assistance to public and private entities, to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce state costs.

Pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department). The commission has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB. These rules are codified as 43, TAC, Chapter 6.

The provision of capital to the SIB will result in the reduction of burdens and demands on the limited funds available to the Texas Transportation Commission (commission) and an increase in the effectiveness and efficiency of the department by allowing the SIB to provide financial assistance to eligible transportation projects.

Title 43, Texas Administrative Code, §6.23 authorizes eligible entities to submit applications for financial assistance from the SIB and prescribes requirements for an application. The proposed project and loan are in conformity with the purposes of the SIB and will expand the availability of funding for transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the Duck Creek Water Supply Corporation meets the requirements of 43 TAC §6.32(c)(1) and §6.32(c)(2), and in accordance with that section, the commission grants preliminary approval of the application to borrow \$583,000 from the State Infrastructure Bank, and directs the executive director to implement the actions authorized and required by that section.

ITEM 11. RIGHT OF WAY

Bell County - Authorize the negotiation of options to purchase for the advance acquisition of right of way for I-35

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

110239
ROW

In BELL COUNTY, a project has been proposed to improve INTERSTATE 35, from US 190 to 0.6 miles south of Loop 363. This project continues the ongoing expansion and widening of I-35.

The Texas Transportation Commission (commission) finds that use of options to acquire property for possible use in connection with the I-35 project may reduce the time required for the acquisition of right of way and can be economically beneficial to the state by either establishing the purchase price at current market value as of the date of the option contract or establishing a methodology for determining a purchase price at the time the option is exercised without the necessity for condemnation, and/or agreeing to restrictions on the owner's future development and improvement of the property. Successful negotiation of options for this project will help preserve the transportation corridor and benefit both the public and land owners along the proposed route.

Although construction of the project is not yet authorized and no final determination has been made on the alignment of the project, preserving the transportation corridor and the completion of the I-35 project is essential and urgent, as the construction of the project would alleviate congestion and improve traffic flow in the Temple area and the surrounding regions.

Transportation Code, §201.103 and §361.032 authorize the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads as well as turnpike projects.

Transportation Code, §§203.051 and 203.052 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway or turnpike project, including property necessary or convenient to protect a state highway or turnpike project or to accomplish any other purpose related to the project location, construction, improvement, maintenance, beautification, preservation, or operation.

Transportation Code, §202.112 authorizes the commission to purchase an option to acquire property for possible use in, or in connection with, a transportation facility before a final decision has been made to locate the transportation facility on that property.

IT IS THEREFORE ORDERED by the commission that the Waco district engineer is authorized to negotiate with property owners along the proposed route of I-35 and execute option contracts for the purchase of property of a size and in a location as is reasonably related to the possible future design and alignment of such transportation facility, and to expend funds for option fee payments, surveys, title examinations, appraisals and other expenses reasonably necessary to purchase the options.

ITEM 12. CONTRACTS

a. Award or Reject Highway Improvement Contracts

(1) Maintenance (see attached itemized list)

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order, rejecting Project No. RMC-612748001 in Jefferson County presented by Construction Division Director Thomas Bohuslav:

110240
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on September 8 and 9, 2005.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway maintenance contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) Highway and Building Construction (see attached itemized list)

Chairman Williamson made a motion, seconded by Commissioner Johnson to amend the minute order to defer Project No. STP 2005(880) in Cameron County and the commission approved the amendment. Commissioner Johnson made a motion, seconded by Commissioner Andrade and the commission approved the following minute order, rejecting Project Nos. CL 521-6-126 in Bexar County; STP 2005(918)SFT in Hamilton County; C 924-10-5 in Jeff Davis County; C 148-3-23 in Kimble County; and CPM 904-00-112 in Potter County presented by Construction Division Director Thomas Bohuslav:

110241
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on September 8 and 9, 2005.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway improvement contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

b. Contract Claims**(1) Bexar County - Project NH 98(386) - Approve a claim settlement with Zachry Construction Corporation for additional compensation**

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110242
AEO

In BEXAR COUNTY on FM 2696, Zachry Construction Corporation (contractor) was awarded construction project NH 98(386) in the amount of \$21,350,000.13.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amount of \$97,182.99 for the 55 percent burden markup difference and interest on the Change Order No. 94 amount for the 3-year period it took to resolve the request.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claim was successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$21,922 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$21,922 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

(2) Smith and Van Zandt Counties - Projects RMC 609591001 and RMC 610085001 - Approve claim settlements with Code 3 Maintenance for additional compensation

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110243
AEO

In SMITH & VAN ZANDT COUNTIES on INTERSTATE 20, Code 3 Maintenance (contractor) was awarded maintenance project RMC 609591001 in the amount of \$13,999.46 and project RMC 610085001 in the amount of \$19,894.00.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amounts of \$37,800 and \$24,840 respectively for debris removal from the service roads and ramps, as well as accident site cleanup, for cycles done prior to being given notice to stop in June 2004.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claims were successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$1,500 in full and final satisfaction of both claims. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contracts.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$1,500 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

(3) Tom Green County - Project BH 2000(186) - Approve a claim settlement with Cactus Concrete, Inc. for additional compensation

Commissioner Houghton made a motion, seconded by Commissioner Johnson and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110244
AEO

In TOM GREEN COUNTY on US 67, Cactus Concrete, Inc. (contractor) was awarded construction project BH 2000(186) in the amount of \$12,493,116.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amount of \$69,300 for the return of 77 days of liquidated damages based on several issues that arose during the construction of the project.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor.

The contractor failed to notify the department of his acceptance of the proposed settlement amount within the prescribed 20-day period.

Pursuant to Title 43, Texas Administrative Code, §9.2, the failure to notify the department within the prescribed 20-day period bars the contractor from further appeal.

The agreed resolution requires that the contractor be paid the sum of \$3,600 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$3,600 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

ITEM 13. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute orders, presented by Executive Director Michael Behrens.

a. Donations to the Department

(1) Bridge Division - Consider a donation from the National Steel Bridge Alliance (NSBA) for a department employee's travel expenses to attend the NSBA Strategic Brain Storming Session to be held in Nashua, New Hampshire from October 4-6, 2005

110245
OGC

This minute order considers a donation of \$920.80 in travel expenses from the National Steel Bridge Alliance (NSBA) for a Texas Department of Transportation (department) employee to attend NSBA's Strategic Brain Storming Session. The session will be held from October 4-6, 2005, in Nashua, New Hampshire.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Members of the donor's organization may be interested in a contract, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$920.80 by NSBA is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(2) Travel Division - Consider donations from various firms in support of the department's Adopt-a-Highway program

110246
OGC

This minute order considers donations in the amount of \$500 each by ARCADIS G & M, Inc., Binkley & Barfield, Inc., Bucher, Willis, & Ratliff, Costello, Inc., LJA Engineering & Surveying, Inc., Pate Engineering, Inc., Rods Surveying, Inc., and S & B Infrastructure, Ltd. and from Othon, Inc. in the amount of \$100 to the Texas Department of Transportation (department) in support of the Adopt-a-Highway Program. The purpose of the Adopt-a-Highway Program is to assist the department's litter prevention and highway maintenance efforts. These donations have been examined by department personnel. The department recommends issuance of this minute order on the ground that it is in the best interest and welfare of the traveling public.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donations will further the department's responsibilities and that the donors are not a party to a contested case before the department and have not been a party to a contested case before the department during the last 30 days. The commission also finds that the donors are interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donations would nonetheless provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of a total amount of \$4,100 by the donors has been accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

b. Eminent Domain Proceedings

(1) Various Counties - noncontrolled and controlled access highways (see attached itemized list)

110247
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said

land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Fort Bend	US 90A	0027-08-149	128
2	Fort Bend	US 90A	0027-08-149	129
3	Hidalgo	BS 83	0039-02-053	39
4	Hidalgo	BS 83	0039-02-054	31
5	Hidalgo	BS 83	0039-02-054	32
6	Robertson	SH 6	0049-06-070	17
7	Henderson	US 175	0197-06-045	12

NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
8	Henderson	US 175	0197-06-045	43
9	Williamson	US 79	0204-01-059	271
10	Williamson	US 79	0204-01-059	272
11	Williamson	US 79	0204-01-059	274/274E
12	Williamson	US 79	0204-01-059	275
13	Williamson	US 79	0204-01-059	276
14	Williamson	US 79	0204-01-059	277
15	Williamson	US 79	0204-01-059	281
16	Williamson	US 79	0204-01-059	282
17	Williamson	US 79	0204-01-059	283
18	Dallas	LP 12	0353-05-105	13
19	El Paso	FM 76	0674-01-058	46
20	Cooke	FM 922	0845-03-047	50
21	Harris	SH 6	1685-05-082	3
22	Victoria	LP 463	2350-01-038	2
23	Victoria	LP 463	2350-01-038	4
24	Midland	FM 1379	2383-01-020	3
25	Harris	Gulf Bank Road	8003-12-008	103
26	Harris	Gulf Bank Road	8003-12-008	104
27	El Paso	Buford Road	8056-24-003	18B
28	El Paso	Buford Road	8056-24-003	20

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Hill	IH 35	0014-24-058	1
B	Bell	IH 35	0015-14-117	46A
C	Bell	IH 35	0015-14-117	46B
D	Bell	IH 35	0015-14-117	48
E	Hidalgo	US 83	0039-17-144	44
F	Hidalgo	US 83	0039-17-144	70
G	Baylor	US 277	0156-15-002	4
H	Brazoria	SH 35	0179-01-040	905
I	Dallas	IH 35	0196-03-231	24
J	Dallas	IH 35	0196-03-231	26
K	Dallas	IH 35	0196-03-231	49
L	Harris	IH 10	0271-06-100	521
M	Harris	IH 10	0271-07-260	709
N	Harris	IH 10	0271-07-260	724
O	Harris	IH 10	0271-07-265	665A
P	Travis	SH 130	0440-06-008	301A, 301B, & 301BE
Q	Harris	IH 45	0500-03-510	7E
R	Johnson	SH 121	0504-05-002	76

Note: Exhibits 1 through 28 and A through R on file with minute order clerk.

c. Highway Designations**(1) Gregg and Rusk Counties - Redesignate US 259 along a new location in and around the City of Kilgore and redesignate the former location of US 259 as US 259 Business**110248
TPP

In GREGG AND RUSK COUNTIES (county) in the city of Kilgore (city), city and county officials have requested that the new relief route in and around the city be designated on the state highway system as US 259. The county and city officials have also requested that the former location of US 259 be redesignated on the state highway system as US 259 Business.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the new by-pass in and around the city be designated on the state highway system as US 259 and that the former location be redesignated on the state highway system as US 259 Business.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. US 259 be designated on the state highway system along a new location from 1.45 miles northeast of the intersection of STATE HIGHWAY 31 southward and southwestward to 1.82 miles south of the intersection of STATE HIGHWAY 42, a distance of approximately 6.91 miles.
2. The former location of US 259 is redesignated on the state highway system as US 259 Business-G from 1.45 miles northeast of the intersection of SH 31 southward to 1.82 miles south of the intersection of SH 42, a distance of approximately 6.6 miles.

IT IS FURTHER ORDERED that upon approval by the commission this minute order, along with all other pertinent information, be forwarded to the American Association of State Highway and Transportation Officials Special Committee Special Committee on U.S. Route Numbering for their consideration.

(2) Smith County - Redesignate FM 2767 along a new location and return the former segments of FM 2767 to the City of Tyler and Smith County. Extend the designation of FM 850 along a new location from its current terminus at the former location of FM 2767 to its new terminus at the new location of FM 2767110249
TPP

In SMITH COUNTY (county), in and around the city of TYLER (city), city and county officials have requested that FARM TO MARKET ROAD 2767 be designated on the state highway system along a new location. In order to facilitate the flow of traffic, promote public safety and maintain continuity on the state highway system, the designation of FARM TO MARKET ROAD 850 will be extended to the new location of FM 2767.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the new location be designated on the state highway system as FM 2767, that the designation of FM 850 be extended on the state highway system to the new location of FM 2767, and the former location of FM 2767 be removed from the state highway system.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. FARM TO MARKET ROAD 2767 is designated on the state highway system along a new location from 0.17 mile northeast of the intersection of FM 850 westward to the intersection of STATE HIGHWAY LOOP 323 at Erwin Road, a distance of approximately 0.51 mile.
2. A segment of the former location of FARM TO MARKET ROAD 2767 is removed from the state highway system and returned to the city for control, jurisdiction, and maintenance from the intersection of SH Loop 323 to 0.13 mile northeast of the intersection of SH Loop 323, a distance of approximately 0.13 mile.
3. A segment of the former location of FARM TO MARKET ROAD 2767 is removed from the state highway system and returned to the county for control, jurisdiction, and maintenance from 0.13 mile northeast of the intersection of SH Loop 323 to the intersection of FM 850, a distance of approximately 0.31 mile.
4. A segment of the former location of FARM TO MARKET ROAD 2767 is removed from the state highway system and obliterated from the intersection of FM 850 to 0.17 mile northeast of the intersection of FM 850, a distance of approximately 0.17 mile.
5. FARM TO MARKET ROAD 850 is extended on the state highway system along a new location from its present terminus at the former location of FM 2767 northward to its new terminus at the new location of FM 2767, a distance of approximately 0.05 mile.

d. Load Zones & Postings

Various Counties - Revise load restrictions on the state highway system:

(1) Roadways

110250
CST

The Texas Transportation Commission (commission) under provision of Texas Transportation Code §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made on the state highway system to determine and fix the maximum loads to be transported or moved on, over or upon the roads of the highway system.

It has been determined from this investigation that the loads on certain sections of roads of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the road described in Exhibit A be removed, superseding any portion of previous action in conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the removal of this load limitation effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) Bridges

110251
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over those bridges described in Exhibits A and B be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the placement, revision, or removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Gillespie County - RM 965 north of Fredericksburg - Consider the sale of surplus right of way

110252
ROW

In GILLESPIE COUNTY, on RANCH TO MARKET ROAD 965, the State of Texas (state) acquired certain land for highway purposes by instruments recorded in Volume 67, Pages 608 and 638, Deed Records of Gillespie County, Texas.

A portion of the land (surplus land), described in Exhibits A-1 and A-2, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowners.

Sidney E. Crenwelge and Ewald Weinheimer, Executors of the Estate of Alfred H. Weinheimer, Deceased, are the abutting landowners and have requested that the state sell the surplus land to them for \$21,513.

The commission finds \$21,513 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Sidney E. Crenwelge and Ewald Weinheimer, Executors of the Estate of Alfred H. Weinheimer, Deceased, for \$21,513; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibits A-1 and A-2 on file with minute order clerk.

(2) Harris County - US 59 at Greenbriar Street in Houston - Consider the sale of surplus access rights

110253
ROW

In HARRIS COUNTY, on US HIGHWAY 59, a designated controlled access highway, the State of Texas (state) owns and controls certain access rights to the highway facility to and from the abutting lands.

A portion of the access rights (surplus access rights), described in Exhibit A, is no longer needed for a state highway purpose.

Kirby Rice, Ltd., a Texas limited partnership (Kirby Rice), owner of a 1.535 acre tract of land conveyed by deed recorded under Harris County Clerk's File Number V890480 of the Official Public Records of Real Property of Harris County, Texas (Kirby Rice Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Kirby Rice for \$62,809.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus access rights to the abutting landowner.

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to Kirby Rice for a cash consideration of \$62,809.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument conveying the state's interest in the surplus access rights to Kirby Rice for \$62,809.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Kirby Rice Tract and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Kirby Rice Tract.

Note: Exhibit A on file with minute order clerk.

(3) Taylor County - US 83 south of Ovalo - Consider removing right of way from the state highway system and quitclaiming the right of way to the abutting landowner

110254
ROW

In TAYLOR COUNTY, on US 83, the State of Texas (state) used certain land for highway purposes for which there is no record title in the state's or county's name.

The land (surplus right of way), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend, at the county's request, the quitclaim of land to the abutting landowners when there is no record title.

John R. Gray and wife, Anita F. Gray, are the abutting landowners and have requested that the surplus right of way be quitclaimed to them.

It is the opinion of the commission that it is proper and correct that the state quitclaim its rights, title and interest in the surplus right of way to John R. Gray and wife, Anita F. Gray, in accordance with the statute.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument quitclaiming all of the state's rights, title and interest in the surplus right of way to John R. Gray and wife, Anita F. Gray; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

FURTHER, IT IS ORDERED by the commission that the surplus right of way is removed from the state highway system.

Note: Exhibit A on file with minute order clerk.

(4) Tom Green County - MLK Drive at abandoned Fourth Street in San Angelo - Consider the sale of surplus right of way

110255
ROW

In the city of San Angelo, TOM GREEN COUNTY, on MARTIN LUTHER KING DRIVE, the State of Texas acquired certain land for right of way purposes by instrument recorded in Volume 819, Page 915, Deed Records of Tom Green County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

Palmer Feed and Supply, a partnership, is the abutting landowner and has requested that the surplus land be sold to the partnership for \$800.

The commission finds \$800 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Palmer Feed and Supply, a partnership, for \$800; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(5) Wilson County - Old SH 16 at US 181 northwest of Floresville - Consider the sale of surplus right of way

110256
ROW

In WILSON COUNTY, on OLD SH 16, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 180, Page 635, Deed Records of Wilson County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

Wilson County has requested that the surplus land be sold to the county for \$1,465.

The commission finds \$1,465 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Wilson County, Texas, for \$1,465; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state

110257
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portions of minute orders establishing the speed zones shown on the attached Exhibit C are canceled.

Note: Exhibits A, B, and C on file with minute order clerk.

ITEM 14. Executive Session Pursuant to Government Code, Chapter 551

- a. Section 551.071 - Consultation with and advice from legal counsel**
- b. Section 551.072 - Discussion of real property purchase, exchange, lease, donations**
- c. Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.**

The commission did not meet in executive session.

OPEN COMMENT PERIOD - The commission did not receive any comments.

Commissioner Johnson made a motion, seconded by Commissioner Houghton and the commission approved adjourning the meeting.

The regular meeting of the Texas Transportation Commission adjourned at 2:01 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on September 29, 2005, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation